RAS 9840

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

In the Matter of	Filed March 30, 2005
USEC Inc. (American Centrifuge Plant)	Docket No. 70-7004

REPLY BY GEOFFREY SEA
TO ANSWER OF USEC INC.

Petitioner Geoffrey Sea comes pro se seeking leave to intervene in the above-captioned proceeding and to raise certain issues material to the issuance of the licenses sought by USEC Inc. Petitioner has filed twenty-four pages of contentions with additional exhibits and expert statements for consideration by the Nuclear Regulatory Commission ("the Commission" or "NRC"). USEC has filed an answer on March 23, 2005, arguing that Petitioner does not have standing to intervene, and that none of Petitioner's contentions should be admitted. Commission staff has answered on March 25, 2005, raising a different set of issues regarding Petitioner's standing, and accepting at least one contention as admissible.

This filing is a reply to USEC's answer. The organization of this reply will parallel that of USEC's answer, with three sections addressing: I. Filing Requirements, II. Legal Standing, and III. Admissibility of Contentions. Petitioner's reply to the NRC staff will follow, but some references to that answer will be made herein.

Template = SECY-037

SECY-02

I. Filing Requirements

Applicant USEC spends four pages of its answer to challenge whether Petitioner met the filing requirements of the Commission. These four pages attempt to create an issue where none exists; they are characterized by persistent mischaracterization of the facts and blatant omissions. Indeed, NRC staff, in its answer, does not mention any issue with Petitioner's filing and treats the petition as having been filed in accordance with Commission regulations.

The essential facts of Petitioner's filing are as follows: The petition was sent electronically before 5 PM on the deadline day, February 28, 2005, to the NRC Secretary's office, the NRC General Counsel, and to USEC's counsel. Two expert statements—those of Karen Kaniatobe (Tribal Historic Preservation Officer of the Absentee Shawnee Tribe) and Charles Beegle (owner of the historic Rittenour property adjacent to the federal reservation in Piketon) were expected but had not yet been received by late in the afternoon on February 28th. At about 3 pm, when it became clear that the statements would not arrive in time to be included in the electronic filing, Petitioner called Stephen Lewis at the NRC General Counsel's office, to seek instruction. In accordance with the guidance of Mr. Lewis, Petitioner attached a cover letter with the electronic filing, advising that the two expert statements would be included with the hard copy mailing, and also advising that certain corrections and additions to the text would be necessary in order to incorporate and integrate the statements into Petitioner's contentions, as Commission regulations require for expert statements.

Ms. Kaniatobe's statement arrived by FedEx in the late afternoon of February 28th. Mr. Beele's statement arrived by fax at 7:02 pm that evening. Explanations and additions based on these two statements were then incorporated into the text of the petition and a complete hard

copy was sent by FedEx to all three recipients the next day, March 1, 2005. The following day, March 2, 2005, before 5 pm, an electronic version of the mailed petition was sent to all three recipients (NRC Secretary, NRC GC, and USEC counsel). A second cover letter was attached to both the mailed and e-mailed copies of the corrected petition. This second cover letter explained that the attached was a complete and corrected petition that superceded Monday's filing. Since all recipients received complete and corrected petitions by both mail and e-mail, within the same time that they would have normally, and since the two cover letters made the reason for the changes explicit, there was no inconvenience to any party, and NRC staff appears satisfied of this.

It should be noted that the only alternative available to Petitioner would have been to make a late filing based on the "new information" that Petitioner received at the end of the deadline day. It is this option that would have created real inconvenience and delay for all parties.

USEC mischaracterizes this whole situation by stating that there were two separate petitions filed and that neither met the filing requirement. A corrected petition submitted within a day, with two explanatory cover letters, cannot be construed as two separate filings. It was a single filing, with a correction. USEC uses its concocted notion of two filings to argue that Petitioner "did not mail the original or any copies of the first Petition to the NRC or USEC." A corrected copy was mailed. In USEC's bizarro world, Petitioner should have mailed an uncorrected and corrected copy of the petition simultaneously. If the purpose of the regulations is to facilitate speed and clarity in proceedings, USEC's suggestion could only have produced the opposite result.

USEC recites details of the mailing, such as the address of the FedEx office from which the mailing was sent on March 1, as if these details imply some problem. They don't. There was no problem, beyond the fact that two essential expert statements arrived late in the day.

Most egregiously, USEC omits any reference to the fact that the corrected and completed petition was e-mailed to them and to NRC on March 2. They obviously received this e-mail, because they include in their answer an electronically generated comparison of the two versions that Petitioner sent by e-mail. They provide no explanation of this comparison, as that would have necessitated the revelation that they received Petitioner's second e-mail. Thus they had a corrected version before they ever would have received the mailed uncorrected version they say they wanted. It just makes no sense.

USEC then launches into a diatribe about "inexcusable tardiness" and the unacceptability of being "even a day late." Petitioner was not a day late. Petitioner filed precisely on time, then provided a corrected copy both by mail and e-mail. No tardiness there. No basis for USEC's complaint exists.

II. Legal Standing

USEC begins its attack on Petitioner's standing by stating that "Petitioner indicates that his residence is at "340 Haven Ave., Apt. 3C, New York, NY." This conveniently omits that the petition clearly states that the Petitioner is in the process of relocation, that Petitioner entered into a contract for purchase of the Barnes Home at 1832 Wakefield Mound Road in Piketon in September, 2004, that petitioner has been in transit between Ohio and New York since the summer of 2004, and that Petitioner has planned and does plan to make the Barnes Home

property his permanent residence. Petitioner listed his New York address as "pending relocation to Pike County." Applicant USEC ignores the qualification.

Petitioner supplied a letter from Linda A. Basye, Executive Director of the Pike County Convention and Visitors Bureau, dated 10/21/04, that makes clear Petitioner's intention to restore the Barnes Home and make it available for public visits—and the Pike County Bureau's support of that project. USEC ignores this letter.

Petitioner withheld copies of his purchase agreement for proprietary reasons, and USEC questions this by asserting that "the NRC cannot presume that the withheld information would support his position. Petitioner's generalized claims of "equitable title" cannot be credited when he has chosen to withhold the details that would explain the full extent of his property interest." (USEC Answer, page 10.)

To satisfy any such questions, Petitioner here attaches Exhibit T, "Affidavit on Geoffrey Sea's Real Property Acquisition in Pike County, Ohio" from the Pike County attorney handling the transaction. (Petitioner is providing this exhibit under separate cover and requesting that it be withheld from public release, along with the names involved, since it contains privacy-protected material.) The affidavit confirms that:

a. Petitioner entered into negotiations for purchase of the Barnes Home and property in August, 2004, and signed a contract of sale with a deposit on September 2, 2004.

b. The contract has been in effect through extensions and purchase options since that time.

c. Petitioner has been diligently pursuing financing for the sale since that time. (Difficulties were encountered owing to both the age of the house and the looming prospect of USEC's centrifuge plant opening next door.)

d. The purchase is nearing completion with an estimated closing date of April 6, 2005.

e. Petitioner has been in Pike County "on five separate occasions in this time period to arrange appraisals, financing, execution of documents, down payment on the purchase contract and payment of considerations on the options to purchase."

f. Petitioner's "stated plan through this entire purchase process has been to make southern Pike County his permanent domicile. From my conversations with Mr. Sea and his actions, I have knowledge that Mr. Sea will be moving to Pike County immediately upon his completion of this purchase of real property..."

Between August 2004 and the current time, Petitioner has divided his time roughly equally between Pike County and New York, while preparing to move. Petitioner did establish residency in Pike County starting in August of 2004. During his extended five stays in Ohio during this transition period, Petition has often stayed at the Rittenour Home, another historic home in Sargents that is proximate to the Barnes Home and to the atomic site. Since October, Petitioner has stored a significant amount of his clothing, books, furnishings and other items at the Rittenour Home and at other nearby locations, pending permanent relocation. Petitioner has also stayed at local motels including the Piketon Motel.

Since August of 2004, Petitioner has attended numerous public events in Pike County, testifying to his regular presence there. These appearances included his attendance at the large Kerry Rally at the West Farm in Wakefield on October 16, 2004; his participation in the Ohio Historical Society's Preservation Conference in Columbus between November 4 and 6, 2004; his appearance at the Department of Energy Semiannual Environmental Hearing in Piketon on December 2, 2004; and his public testimony at the NRC scoping hearing for ACP in Piketon on

January 18, 2005. Petitioner submits that his documented appearances in Ohio in August 2004, September 2004, October 2004, November 2004, December 2004, and January 2005, do establish a pattern of residency that began in mid-August 2004, when Petitioner first committed himself to purchase of the Barnes Home—before USEC submitted its license application. USEC's complaint that standing must be established "at the commencement of the proceeding" (USEC Answer, page 10) is therefore satisfied.

In November of 2004, Petitioner submitted a proposal and questionnaire with the Ohio Historic Preservation Office to have the Barnes Home listed on the National Register of Historic Places. This is a very serious and involved process—Petitioner submitted over forty pages of material. This process resulted in the letter from Barbara Powers of OHPO on December 22, 2004, certifying that the Barnes Home does indeed qualify for listing under two separate categories (architectural significance and association with historical events—it is unusual that a property qualifies under two categories). This letter, submitted with the petition as Exhibit I, is not mentioned by USEC. Petitioner is now engaged in writing the draft National Register nomination letter for the Barnes Home, an extremely laborious process that no sane individual would undertake without profound commitment and interest.

As further evidence of his active relocation, Petitioner supplies a copy of his agreement with a Manhattan real estate company for the listing for sale of his Manhattan co-op apartment, as Exhibit U. (This is provided under the same request for withholding from public disclosure.)

USEC raises a number of questions about the specifics of Petitioner's relocation on page 12 of its answer. There are only so many ways that a person can demonstrate he is moving—Petitioner has satisfied just about all of them and USEC is invited to come and witness the move, as long as they are willing to pitch in. USEC raises irrelevant questions such as regarding

restoration of the Barnes Home. USEC states that it "understands that the Barnes Home is not currently occupied and that it would require substantial renovation before it would be habitable." It is curious how USEC came to this "understanding," since its Environmental Report does not mention the Barnes Home, or any other nearby historic property. One has to intervene in a licensing action to get a historic property recognized as a cultural resource? Certainly that's not the way it's supposed to work under the National Historic Preservation Act.

In any case, USEC's sudden professed knowledge about the Barnes Home is lacking. The house could be occupied tomorrow. Only some rooms need major renovation. It has electricity and water. No one who undertakes a historic renovation plans to accomplish everything all at once. The major renovations will take years, but there is no conflict between renovation and continued occupancy. If USEC is really concerned about this issue, an assistance grant from the company would be appreciated, and Petitioner would commit to making note of the grant on the home's historic plaque.

On page 10 of its answer, USEC accuses the Petitioner of suspicious timing, "which suggests that it is little more than an attempt to manufacture standing in order to provide a forum for publishing his views on broad public policy." USEC here appears to be accusing me of the crime of wanting to write about the encroachment of their centrifuge plant on my historic property next door. If so, maybe they should rename their project the Un-American Centrifuge Plant. Writers write. It is our right. In America.

But be that as it may, let's talk about timing. With his petition, Petitioner included Exhibit C, his essay from the Winter 2004 issue of the *American Scholar*, which appeared in print in early December of 2003, a full six weeks before USEC announced its decision to site the

ACP at Piketon. In that essay, the Petitioner wrote about the Barnes Home and one of the historic events associated with the home. At the conclusion of the essay, Petitioner wrote:

> "The Galloway farm and the old Barnes home stand like gateposts on Wakefield Mound Road, at the main entrance to the A-Plant. Both should be marked as memorials..." (page 84)

Now this line came out in print in December of 2003, but of course it was written much earlier. It was contained in the initial draft of the essay, which was submitted to the *American Scholar* in April of 2003, before the Petitioner had ever heard of the American Centrifuge Plant. In fact, that line was written not in 2003, nor in 1993, but in 1983, just after the Petitioner located the site of the slaying of the last wild passenger pigeon. Testimonials from people who read early drafts of the essay at that time can be collected if necessary. Petitioner hastens to point out that in 1983, USEC was but a sparkle in some DOE bureaucrat's eye. So how does the Petitioner's interest in the Barnes Home as a historic property, dating from 1983, make his timing suspicious?

Petitioner thinks that USEC's timing is suspicious. USEC apparently waited to announce its siting decision for ACP until after it read Petitioner's essay in December of 2003. Then USEC apparently waited to file its license application until after the Petitioner already committed himself to purchase of the Barnes Home in August of 2004. Then USEC apparently waited until after the Petitioner had his move in progress, before challenging his standing in the ACP licensing action. Perhaps USEC believes that the Hopewell put their giant earthworks where they did just to foil USEC's plans to build a uranium enrichment plant on that site.

As is typical for a USEC document, the most important part is what's left out. USEC only mentions in passing Petitioner's argument that according to USEC's own Environmental Report, which includes an analysis of wind-patterns and proximity, it is the Petitioner, residing on the

south-southwest boundary of the ACP site, who will be the MEI (Maximally Exposed Individual). USEC attempts to negate this fact by saying that the Barnes Home is "about 500 feet to the boundary." USEC should not make presumptions. Since USEC itself has noted that the Barnes Home needs renovation, USEC should also have noted that the other structure on the property, a barn that Petitioner would convert into a residence during the major phase of house renovation, actually sits right at the fence line—the hypothetical point of maximum exposure. USEC attempts to downplay this potential injury by stating the low radiation dose calculated for this spot. But that negates the whole concept of presumptive standing based on nearby residency. NRC has long recognized that the MEI is also the guy who would get the largest dose in the case of a catastrophic event.

Petitioner contends that his established residency qualifies him for presumptive standing, and his equitable title in the Barnes Home qualifies him for regular standing in this proceeding.

USEC's discussion of standing suffers from a seemingly intentional confusion between "presumptive standing" and "regular standing" under NRC regulations. Since the NRC staff answer treats this distinction in a more coherent way, Petitioner will elaborate on his qualifications for both presumptive and regular standing in his response to the staff, including references to legal precedent on standing under NEPA and NHPA.

III. Contentions

USEC provides a preamble to its discussion of Petitioner's contentions, in which USEC summarily dismisses the Petitioner's entire discussion of the historic sites that would be impacted by the ACP, and then USEC states: "What Petitioner does not do, however, is ever

demonstrate that any of those resources are on the ACP site, or that the ACP will adversely affect those resources in any way." (USEC Answer, page 20.)

This statement demonstrates how profoundly USEC misunderstands the basis for the National Historic Preservation Act and the National Environmental Policy Act. First, as clearly stated in the petition with citations and support from expert statements, cultural resources do not have to be located on the federal site in order to be impacted and qualify for protection. (Though some resources in this case are on federal land or adjoining land.) Second, USEC relies throughout in its discussion of impacts on the idea that an impact does not exist, or should be considered "beyond the scope" of NRC review, if that impact is mediated by DOE property or through DOE land.

This concept merits intense analysis. This project is perhaps unique—and significantly different from the proposed NEF in New Mexico—in that a quasi-private company proposes to operate a licensed facility within federal buildings, on federal land, and using federally-owned equipment. NRC and DOE have entered into a Memorandum of Understanding that restricts NRC regulatory activity to the non-DOE aspects of the ACP project. First, it must be said that the dividing line between DOE and USEC is increasingly difficult to determine. On March 10, 2005 (three weeks ago), the DOE Office of Audit Services released an Audit Report on the Gas Centrifuge Enrichment Plant Cleanup Project at Portsmouth. (available at http://www.ig.doe.gov/pdf/ig-0678.pdf). A conclusion of the report is that $17 million of USEC ACP private expenses have been improperly picked up by DOE, and that hundreds of millions of dollars in taxpayer funds are at risk of falling into this same category. (Petitioner will treat this report at length in a late filing based on the new information.)

What this means is that USEC can not only get its ACP expenses covered by American taxpayers (perhaps why they call it the American Centrifuge Plant) but that the more is diverted to public payment, the more is also shielded from regulatory review under USEC's interpretation.

There is a vital principle here, the principle of mediated impact. Suppose the centrifuge plant explodes. If shrapnel from the explosion hits the Petitioner, that's clearly an impact (though USEC might argue the point.) If shrapnel hits a tree and the tree falls on the Petitioner, that still has to be considered an impact. Mediated impacts have to be included.

So suppose that an action is initiated by USEC but the impact is mediated through DOE. USEC wants that to fall into a different category. Suppose the ACP explodes, and the shrapnel hits a DOE fencepost, and the fencepost is sent hurtling toward the Petitioner. USEC argues that this is "beyond the scope" of regulation and public intervention, merely because DOE and NRC signed an agreement of non-interference.

It is only under this interpretation that USEC can claim that the Petitioner has shown no impacts. For example, the defoliation of a "security perimeter" around the ACP using an herbicide is ruled out as causing any impact precisely because it is done on behalf of USEC by DOE. The pumping of water for ACP from underneath Hopewell earthworks is ruled out as an impact, because it's done on behalf of USEC by DOE. The erection of security fences and guard posts for ACP along historical properties is ruled out as an impact because it is done on behalf of USEC by DOE. If NRC buys this USEC interpretation, it might as well cancel the whole licensing review now, because it makes of that review a farce. NRC must seek some basis for regulation in this case that accounts for the unique DOE-USEC relationship and that abides by the Congressional intent of NEPA and NHPA protections for the public interest.

Under USEC's interpretation, no petitioner could ever demonstrate an ACP impact, except in the case that a centrifuge would dislodge from its mount, go hurtling through the wall of the ACP buildings, and land on a person nearby. This cannot be the interpretation of impact that is allowed to govern. It flouts and indeed negates the entire intent and meaning of NEPA and NHPA. (An analysis of this problem prepared for the petitioner by Thomas King, a preservation expert and whose c.v. was included with the petition, is attached as Exhibit V).

Contention 1: Assessment of Cultural Resources

USEC's answer to Contention 1 has largely been negated by the NRC staff answer, which concludes that Contention 1 is admissible. However, Petitioner will here respond to certain USEC misstatements of fact.

USEC begins by proffering its theory that because ACP will be "housed in" DOE buildings, and because DOE activities are "beyond the scope" of the proceeding, any potential ACP impact at all is theoretically ruled out. Petitioner has addressed the problem with this theory above.

On page 21, USEC states that "the few specific resources mentioned by Petitioner are not even on the DOE reservation." That is untrue. Petitioner presented a graphic showing typical Hopewell settlement patterns according to current archaeological theory. Accordingly, many Hopewell village sites are located on the DOE reservation. Evidence of such may in fact exist in the very documents that USEC cites in its Environmental Report, including three studies commissioned by DOE to the consulting firm ACS Group. In its bibliography, USEC contends that two of these studies are "available from DOE." Not only is that not true—DOE has told petitioner that "USEC should not have said that." But according to DOE, those studies have not

even been released to USEC. So the answer to the question of what archaeological evidence there may be onsite, is right now locked up in DOE's vault. NHPA certainly contemplates the requirement that additional studies be conducted where there is a reasonable suspicion that prehistoric resources exist. Petitioner provided that reasonable suspicion in the form of a map and a theoretical model for Hopewell habitation that USEC does not refute. Certainly the NHPA requirement for additional study extends to the mandatory release of existing studies.

On page 22, USEC attributes Petitioner's identification of a very large Hopewell circular enclosure to speculation. First, unlike the Petitioner, USEC does not claim to have examined the area on the ground, or to have examined aerial photographs. Therefore, USEC is not in any position to assess Petitioner's claims. USEC says that Petitioner's Exhibit H, the statement of Professor John Hancock at the University of Cincinnati, "does not mention a larger circle." Oh really? Here is what Professor Hancock says in Exhibit H:

> "The circle-and-square at Piketon, also known as the Barnes Works or the Seal Earthworks, despite its scant remains, is significant for several reasons: ..... –it may include as part of its design a heretofore unrecorded earthen circle, of a ***size unknown anywhere else in the world.***"

That's not a mention? Unlike USEC, Professor Hancock, perhaps the leading expert on Hopewell earthwork identification, did examine aerial photographs, provided to him by the Petitioner.

USEC goes on to say that "Even the diagram Petitioner appended to his Petition does not show any resources on the DOE reservation." USEC exploits an error that Petitioner did make in assembling the map, Exhibit A—an error that was obvious by reference to Petitioner's text. The error is that on DOE's river property, which must be considered as part of the reservation, the DOE property line does extend all the way to the riverbank, including the segmented earthwork

walls on DOE land. (Again, this is clearly stated in the text.) Had USEC bothered to check with DOE, DOE would verify that its land extends to the river. (Petitioner apologizes for the map error and will correct future versions.)

On page 24, USEC claims that water pumping from under these earthworks cannot impact them. USEC cites no authority for this opinion. By the absence of any mention of these earthworks in USEC's Environmental Report, we should presume that USEC was even unaware that they existed. No study has ever been conducted of the effects of water pumping there. This is a classic case where the minimal requirement under NHPA is that studies be conducted.

USEC then addresses the issue of the herbicide spraying and contends that it cannot be ACP related because "it is currently taking place." But for fifty years it did not take place. It only started in 2003, and only for the purpose of preparing a perimeter security zone in preparation for the ACP. (Why else build a security zone two years after the old production has ceased?) Clearly this is an ACP impact, if anything is.

USEC then says that ACP cannot have an impact on tourism and academic study, because the DOE reservation was formerly a site of nuclear activity. The point is that if the license is denied and no ACP is built, there will not be nuclear production at the site, and the area can then revert to its natural development pattern, including study and appreciation of the area's great aesthetic beauty. USEC says that this is unsupported by expert opinion, but Professor Hancock says in Exhibit H:

> "The preservation of this site has at least two major benefits: -it will enable continuing study.....-it will strengthen the resource base for the increasingly lucrative cultural heritage tourism industry and the potential for its associated ***high-quality, non-intrusive economic development in southern Ohio.***"

I call that expert support.

Contention 2: Compliance with Federal Historic Preservation Laws

The essence of USEC's answer to Contention 2 is that the whole subject falls outside the scope of the proceeding. Petitioner contends that it is bizarre and irresponsible to suggest that the whole subject of compliance with a major body of federal law which includes both the National Historic Preservation Act and the National Environmental Protection Act should fall outside the scope of a regulatory proceeding.

USEC then mocks the Petitioner for suggesting that USEC's ER is lacking in that it cites an architectural study of cultural resources that has a start date of 1900 for the age of buildings. USEC says that the study only related to buildings on the DOE reservation. Petitioner thanks USEC for that admission. That was the Petitioner's point—that USEC had neglected any examination of impact on off-site historic properties, including the Petitioner's house, built in 1804.

On page 29, USEC criticizes Petitioner's expert, Thomas King for failing to make specific reference to USEC's application and ER. But Dr. King could not have made "specific reference" because nowhere in USEC's initial filings are NHPA responsibilities clearly spelled out and no place does the phrase "National Register of Historic Places" appear. Dr. King responds to USEC in Exhibit V, attached.

On page 27, USEC criticizes the Petitioner for pointing out the absurdity of USEC's claim that "there are no scenic rivers or endangered wetlands" nearby. USEC makes reference to "a legal process for designating rivers as scenic." What USEC does not say is that this legal process is set in motion at the local level—it does not pretend to be an objective evaluation of a river or creek's scenic value. USEC used lower case in its ER—"scenic river." If USEC had

contacted any Native American groups with historic ties to that locale (as contemplated by NHPA Section 106), USEC would have discovered that the Scioto River, in that locale is considered not only scenic but sacred.

USEC then belittles the fact that Petitioner demonstrated that neither the Absentee Shawnee Tribe nor the owner of an important adjacent historic home had been contacted by USEC or DOE or NRC about the ACP, suggesting that USEC and NRC may have contacted other tribes.

Well, the Petitioner has also contacted Chief Hawk Pope of the Shawnee Nation, United Remnant Band in Ohio, which is not only recognized in Ohio but which traces its history to Pike County and claims a decided interest in the land upon which USEC wants to place its project. Chief Hawk Pope was never contacted about ACP by either USEC or DOE or NRC. He's quite upset about not being contacted. He's also upset to hear that USEC says there are no scenic rivers near the ACP site. Chief Hawk Pope told me that the word Scioto, in Shawnee, means "hair on the water." It was given that name because the river passes through so many ancient sacred burial grounds in the Pike County area, the hair from old graves would float upon the flood tides. All of this is verified in a letter from Chief Hawk Pope, attached as Exhibit W.

If neither DOE nor USEC nor NRC has yet contacted either the Absentee Shawnee Tribe or the United Remnant Band of the Shawnee Nation, then what tribes have they contacted? The Inuit of Alaska? USEC claims that such consultation is the responsibility of either NRC or the SHPO in Ohio. That is a clear misreading of NHPA responsibilities. Clearly the unusual organization of this project has allowed NHPA responsibilities to fall between the agency cracks, and that is precisely the point of Petitioner's Contention 2.

Contention 3. Consideration of Action Alternatives

On page 31, USEC proffers its interpretation of the alternative actions it is required by law to consider. USEC makes reference to Section 1502.14(d)(2005) of NEPA which makes reference to "the scope and goals of the proposed action." But this is a requirement of a federal agency, not of a private license applicant like USEC, and certainly not one planning a project on public land, in public buildings. It is Petitioner's point that the intimate involvement of two federal agencies requires some creativity in defining "the scope and goals of the proposed action" and that other public uses of the land and facilities cannot be excluded.

On page 33 and 34, USEC contends that Petitioner's contention that NRC compel USEC to move the project to Paducah "raises no genuine dispute." Since Applicant USEC is now seeking a license to build and operate at Piketon, not Paducah, it is difficult to interpret the meaning of "no genuine dispute."

More on this contention will be included in Petitioner's reply to NRC staff.

Contentions 4, 5, and 6. Impacts on Surrounding Area, Impacts on Site Cleanup and Community Reuse, Nuclear Proliferation Considerations

In essence, USEC argues that all of the issues raised under these contentions are "beyond scope" because the issues cannot be discussed without reference to DOE and DOE has become a TOS violation for USEC. Mention DOE and you are tossed "out of scope." Petitioner's generic reply is that USEC cannot hide behind the shield of DOE immunity for any and all projected impacts of its proposed project. NRC must reexamine the meaning of a project's scope, when the project involves a quasi-private company operating on federal land inside federal facilities.

Contention 7: Structure and Viability of USEC and of the USEC-DOE Relationship

USEC criticizes petitioner for failing to cite adequate authority for the contention that the DOE-USEC relationship is problematic. Perhaps USEC missed the DOE Office of Audit Services report on the DOE-USEC relationship, issued just ten days after the filing of his petition. This report contains more than enough substantiation of Petitioner's Contention 7. It will be dealt with at length in a late filing based on the acquisition of that new information.

IV. Conclusion

USEC, in its answer to the Petitioner, has misrepresented or omitted many facts, and has failed to even digest the content of the expert statements submitted as exhibits with the Petitioner's petition. Contrary, to USEC's stated view, Petitioner has demonstrated both presumptive and regular basis for standing, and has proffered numerous admissible contentions. Petitioner should be admitted as an intervener in this matter.

Petitioner hereby requests a hearing for oral arguments on the questions of standing and admissibility of contentions.

Respectfully submitted,

Geoffrey Sea

Dated March 28, 2005

Temporary mailing address: 340 Haven Avenue, Apt. 3C, New York, NY 10033

Permanent address after relocation: 1832 Wakefield Mound Road, Piketon, OH 45661

Telephone numbers: 212-568-9729 or 740-835-1508

E-mail: GeoffreySeaNYC@aol.com

V. List of Exhibits (not included in electronic version)

T. Affidavit on Geoffrey Sea's Real Property Acquisition in Pike County, Ohio, from a Pike County attorney, dated March 29, 2005.

U. Realtor's agreement for exclusive listing of Geoffrey Sea's New York apartment, dated March 28, 2005.

V. Statement of Thomas F. King, preservation consultant, author of four books on federal preservation including *Federal Planning and Historic Places: the 106 Process*, dated March 30, 2005

W. Letter from Chief Hawk Pope, Shawnee Nation, United Remnant Band, undated, received March 29, 2005.

EXHIBIT V

Thomas F. King, PhD
P.O. Box 14515, Silver Spring MD 20911, USA
Telephone (240) 475-0595 Facsimile (240) 465-1179 E-mail tfking106@aol.com

Cultural Resource Impact Assessment and Negotiation, Writing, Training

March 29, 2005

Geoffrey Sea
340 Haven Ave., Apt. 3C
New York NY 10033

Dear Geoffrey:

You've asked me for my observations on how the Nuclear Regulatory Commission (NRC) staff's positions on the scope of its responsibilities in the USEC matter, and on the tests that you must meet in order to intervene, relate to the purposes and requirements of the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA). I provide these observations based on some 40 years of professional practice under both statutes, including participation in the development of amendments to the latter and federal regulations and guidelines implementing both.

Both NEPA and NHPA were enacted in order to protect the public interest in the human environment in general (in the case of NEPA) and historic resources in particular (NHPA). It follows that the interested public – made up of people like yourself – has a large role to play in implementation of these laws, and this is reflected in the regulations that agencies must follow in complying with them. Both the NEPA regulations (40 CFR 1500-1508) and the Section 106 NHPA regulations (36 CFR 800) provide for participation in review by interested parties and the general public. The Section 106 regulations are particularly directive in this regard, providing both for general public involvement and participation and for identifying particular "consulting parties" whose interests in the undertaking under review, or its effects, entitle them to ongoing active involvement in the negotiation of ways to resolve adverse effects on historic properties.

It appears that the NRC staff has a much, much more restrictive notion of public involvement than that underlying either NEPA or NHPA. I suspect that this reflects the fact that the staff's policies and procedures for environmental review spring from a different intellectual tradition than do those underlying laws like NEPA and NHPA. A thought-provoking (though rather turgid) recent book that explores this sort of dichotomy is *Citizens, Experts, and the Environment: The Politics of Local Knowledge*, by Frank Fischer (Durham, Duke University Press, 2000). Fischer discusses the world-view that is common among environmental engineers and others involved in the sort of environmental review that is driven by the toxic, hazardous,

and radiological substances laws, in which environmental impact analysis is construed to be a matter of rigorous, generally quantitative, scientific analysis. It is a matter for scientific experts to concern themselves with, and is viewed as far too complicated for ordinary citizens to understand. In this world-view, public involvement is a troublesome requirement imposed by the political system, which should be kept to a minimum so the experts can get on with their work. Fischer documents that this sort of thinking is widespread in the environmental specialist community from which agencies like NRC draw their staffs, and from which their personnel derive their intellectual direction. He also documents how thoroughly wrongheaded it is, but that's another matter. My point is simply that the NRC staff's thinking on how people like you should be involved and issues like yours should be considered in its decision making has much more to do with the philosophical biases of its members than it does with any actual legal requirements.

The NRC staff seeks to limit your access to its decision making process in a variety of ways – for example by insisting that to be recognized as having "presumptive standing" you not only be "injured," but be a resident of the surrounding vicinity, and at the same time insisting that your "injury" must be of a particular kind. Let's look at the last of these first.

The staff asserts that "(i)n Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA")." It is not clear to me why only these two laws are pertinent and not, for instance, NHPA, but for the moment let's assume the staff is correct; your "injury" must relate to the "zone of interests sought to be protected" by the AEA and NEPA. I claim no expertise in the AEA, but I do know about NEPA, and it appears to me manifestly obvious that your "injury" falls well within the sphere of NEPA's "protected interests."

NEPA directs agencies to consider the impacts of their actions on "the quality of the human environment." At 40 CFR 1508.27(b) the NEPA regulations of the Council on Environmental Quality (CEQ) list a range of factors to be considered in judging the significance of impacts on the quality of that environment. It is a long and varied list, and it repeatedly refers to "cultural" and "historic" resources. It surely follows that "interests" in such resources are "protected" to the extent NEPA affords protection to anything. Thus your interests in protecting the historic character of the area subject to effect by NRC's permit action are entirely within NEPA's "sphere of protection."

Why does the NRC staff not understand this? I suspect that – based on the intellectual tradition from which they come – the staff's experts honestly believe that the quality of the human environment is not affected by anything that fails to irradiate someone to a hazardous degree. It follows from that line of reasoning that your interests in the historic character of the area are irrelevant to the potential for environmental impacts.

It also follows, of course, that only actual residents of the vicinity can be "injured," because only residents are likely to suffer a high enough dosage of something emanating from the proposed facility to affect their health and safety. Therefore, it is logical within the staff's likely framework of assumptions, that only nearby residents should be recognized as having presumptive standing. But NEPA isn't about only health and safety. The great bulk of NEPA cases that have been litigated have been brought by parties whose injuries involved damage to places and things they enjoyed and thought important – forests, mountains, animals, bodies of water, beautiful vistas, wilderness, fish, sacred sites, historic places, archaeological sites. Courts routinely grant standing to plaintiffs under NEPA on such grounds; can the staff be seriously proposing that the Commission adhere to a more exclusive standard?

It is also difficult to understand why, if an "injury" within NEPA's "zone of protected interests" is a legitimate topic for NRC consideration, an "injury" within NHPA's "zone" is not equally legitimate. Both laws were enacted by Congress; both apply to all federal agencies; both impose rather similar requirements. To the best of my knowledge, NRC has never been granted an exemption from NHPA's requirements. Your interests clearly fall within NHPA's "zone," since they concern historic properties and effects on them. Under the Section 106 regulations, your interests entitle you to consult about the significance of such properties and how to resolve adverse effects on them. Why does the NRC staff think the Commission can or should deprive you of this entitlement?

Here again, I suspect that the culprit is the world-view of NRC's staff experts. If one believes that environmental impacts are limited to things that scientific experts can quantify, and ordinary citizens have nothing useful to contribute to the discussion, then it follows that all NRC need do to address impacts on historic properties under NHPA is to have expert surveys done and consult with the State's designated expert, the State Historic Preservation Officer. If further follows that the Commission's staff can and should keep the results of its expert studies secret, as it has in this case, and simply present the public with its conclusions. Within this framework of assumptions, the fact that the Section 106 regulations call repeatedly for participation by interested parties and the public is irrelevant; such requirements are mere politico-regulatory hoops to be gotten through with as little effort as possible.

But this interpretation of NHPA's requirements is inconsistent not only with the letter of the regulations but with routine practice in Section 106 review and with the record of case law. Courts have generally been quite liberal in recognizing the standing of interested parties in Section 106 litigation, and certainly have never imposed anything like a residency requirement. In the recent *Bonnichsen et.al. v. US* (Civil No. 96-1481JE, District of Oregon), for example, the court found that a group of physical anthropologists, none of whom lived in the vicinity of the discovery, not only were sufficiently "injured" by the Corps of Engineers' treatment of a human skeleton found on the bank of the Columbia River to give them standing to sue, but that the Corps had violated the NHPA by failing to consult them under Section 106. Here again,

NRC's staff seems to be establishing for the Commission a more exclusive standard than that imposed by courts of law; I have to wonder about the basis for this.

In summary then, what I think we see in the NRC staff's conclusions about your intervention is the expression of a world-view that is common among experts in toxic, hazardous, and radiological impact analysis, that may be sensible in some contexts but thoroughly warps the process of review under NEPA and NHPA. To narrowly limit the range of interests in the public with whom one will engage in environmental impact analysis, and then to insist that these interests themselves demonstrate the existence of impacts ("injuries"), stands the process of environmental review on its head. It is the responsibility of the Commission and its staff to ascertain what impacts its permit action may have on the quality of the human environment under NEPA, and on historic properties under Section 106; it is not your responsibility to do so for them.

I realize that the NRC staff would doubtless argue that all the above factors might give you "regular" standing but not "presumptive" standing – you might have standing, but it would not be automatic unless you actually lived adjacent to the facility. But this distinction still reflects the assumption that one cannot be really "injured" unless one is likely to be subjected to irradiation. Setting aside the question of whether, as a near-term prospective resident, you are not likely to be subjected in the future to this kind of "injury," it seems to me that NHPA (among other laws) provides the basis for other standards for awarding "presumptive standing" that are as good as nearby residency; one merely needs to recognize that exposure to radiation is not the only way one can be "injured" by a project like USEC's. Surely the owner of a National Register or Register-eligible property that is subject to potential effect by the project, who appreciates the historic qualities of the property, must be presumed to be subject to injury by the project. Similarly, I would suggest, someone whose cultural identity is tied up in a property that might or might not be eligible for the National Register, or who has research interests in such a property, or who traditionally uses or enjoys such a property, must be presumed to be subject to injury, and hence should be recognized as having presumptive standing. People in all these categories and others are routinely included as consulting parties under the Section 106 regulations; why should the Commission, acting in the public interest, not do the same?

Although the NRC staff does not comment on it, I have to believe that its beliefs about the environmental review process are in line with those of USEC, which in its response to your petition summarily rejected the earlier letter I provided you. USEC wrote:

"(4) Finally, Petitioner cites a letter from Dr. Thomas F. King (Exhibit Q), which makes no reference to any specific aspect of the ACP application and therefor (sic) *does not provide meaningful support for the contention.*"

My letter, of course, was intended simply to advise NRC that, in my fairly well-informed professional opinion, you had a point in your allegations, which I thought (and think) it appropriate for the Commission to consider further in its decision making. Under NHPA and NEPA it is not my job, or yours, to go out and conduct the studies necessary to identify and address the impacts of NRC's permit actions; it is NRC's job to do so, or to cause the applicant to do so, with our advice and assistance. You have provided substantive information indicating that NRC needs to take a further look at the historic preservation implications of its permit decision; I was advising NRC that I thought you had a good point, that I didn't think you were an eccentric who could safely be ignored. But because I did not refer to a "specific aspect" of the application, in the eyes of USEC my opinion – like yours – can be rejected out of hand. And of course, as you know, it was impossible for me (or anyone else trying to figure out how USEC had considered impacts on historic places) to address "a specific aspect of the ACP application" because neither the application nor the accompanying Environmental Report refer to the requirements of NHPA or to the National Register of Historic Places. The absence of specific evidence in my statement merely reflects the absence of specifics in USEC's application. To judge from the available record, at least (such as it is), USEC has not thoroughly identified historic properties subject to possible effect by its actions – to say nothing of other kinds of cultural resources that ought to be considered under NEPA. This creates a flawed record for use by NRC in making its permit decision. I trust the Commission will understand this, and appreciate your efforts to provide it with a broader and more complete basis for its deliberations.

Good luck in your continuing efforts.

Sincerely,

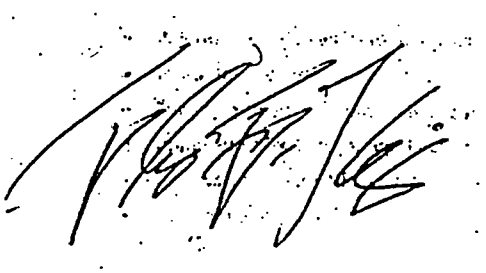

EXHIBIT W

SHAWNEE NATION, UNITED REMNANT BAND

TUKERMAS / HAWK POPE - PRINCIPLE CHIEF

ZANE SHAWNEE CAVERNS and SOUTHWIND PARK
SHAWNEE-WOODLAND NATIVE AMERICAN MUSEUM

Nuclear Regulatory Commission
and whom-ever it may concern,

Dear Sirs,

We were only recently informed of plans to further develop the Nuclear project in Pike County, Ohio. I represent the Shawnee Nation, United Remnant Band. The U.R.B. is recognized as a decendant group / Tribe of the historic Shawnee Nation in Ohio - SUB. AM. H.J.R. 8 - 1980. Our People do have historic and cultural ties to the site in Pike County, near the Scioto river. We do consider the earth works and other Ceremonial and Cultural features there to be sacred. We do, therefore object to the proposed project, for reasons of the projects incompatable and in-appropriate use of the land. Any destruction of features on the site, further poisoning of the ground, or limits to access to the site would be very disturbing and considered by us, wrong.

We are regularly informed of sites for proposed transmission towers and pipe lines. We were not told of this project, similarly. In the future we want to be a consulting source. We await your response.

Chief Hawk Pope

2911 ELMO PLACE • MIDDLETOWN, OHIO 45042

SEE OTHER SIDE →

P.S.

We were informed by Jeffrey Lee, and we do support his intervention in this matter. In the Shawnee language Scioto means, 'Hair in the water' as the river passes through so many burial sites and is so prone to flooding. Again, this place is Sacred to Shawnee People.

Thank you for your time & Consideration.

Chief Hawk Pyon

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Piketon, OH 45661
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30 March 2005

Rulemaking Adjudications Staff of the Secretary
US Nuclear Regulatory Commission

Office of General Counsel
US Nuclear Regulatory Commission

Donald J. Silverman, esq., USEC Counsel
Morgan Lewis Bockius

Dear Sirs and Mesdames,

Attached is the hard copy of my Reply to Answer of USEC Inc., which has also been filed electronically.

This copy contains two exhibits which were not possible to include with the electronic submission. These two exhibits are:

V. Statement of Thomas F. King, preservation consultant, author of four books on federal preservation including *Federal Planning and Historic Places: the 106 Process*, dated March 30, 2005

W. Letter from Chief Hawk Pope, Shawnee Nation, United Remnant Band, undated, received March 29, 2005.

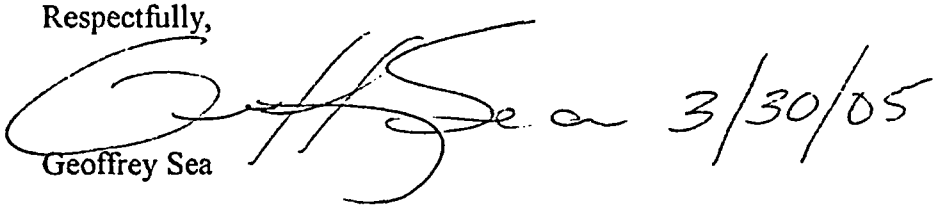
Two other exhibits, Exhibits T and U, are being sent under separate cover, along with a request that they be privacy protected.

This hard copy contains some very minor corrections of typographical errors compared to the version sent electronically. The only two corrections of note are:

On page 11, Line 16, the phrase "dividing line between DOE and NRC" should read "dividing line between DOE and USEC."

On page 18, Line 3, the words "Section 1502.14(d)(2005) should be followed by "of NEPA"

Respectfully,



Geoffrey Sea